IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT
APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of Case

Criminal Appeal No. 1206 of 2001 (1248 of 1987) **Decided ON: October 9, 2006**

A.F.R. (Approved for Reporting)
Not approved for reporting

Date. 09.10.2006

(Initials of Judge)

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
Criminal Appeal NO. 1206 of 2001.
(Old No. 1248 of 1987)

1. Nayeem alias Chhidda (since deceased).
2. Isharat (since deceased).
3. Ilias son of Mohd. Umer, resident of Mohalla Nai Basti, P.S. Halwani, district Nainital.
4. Sajid son of Sahid Hussain, resident of Mohalla Indra Nagar, P.S. Haldwani, district Nainital.

…….. Appellant.

Versus

State.

… Respondent.

Mr. R.S. Sammal, Advocate, for the appellant.
Learned A.G.A. for the respondent.

Hon'ble Prafulla C. Pant, J.

1. This appeal, preferred under Section 374(2) of Code of Criminal Procedure, 1973, (hereinafter, for brevity refered as Cr. P.C.), is directed against the judgment and order dated 24.04.1987, passed in Sessions Trial No. 117 of 1986, by learned I Additional Sessions Judge, Nainital, whereby appellants are convicted under Section 307 read with Section 34 of Indian penal Code, 1860, (hereinafter, for brevity referred as I.P.C.) and each one of them is sentenced to undergo rigorous imprisonment of seven years and to pay fine of Rs. 5000/-, in default of payment of which, the defaulter is directed to undergo simple imprisonment for a period of six months.

2. Heard learned counsel for the parties and perused the record.

3. Prosecution story, in brief, is that on 19.12.1985, PW 1 Head constable Ram Datt Joshi alongwith PW 2 Head constable Mahendra Singh, PW 3 Head constable Chandan Singh and three constables were on patrol duty within the limits of out post of Banbhoolpura, Haldwani. At about 5.30 p.m., when they were to reach line No. 17 in Banbhoolpura,

PW 2 Head constable Mahendra Singh complained of his upset stomach and went back to the out post to ease himself out. He was told to meet the patrol party on his return Near Lal school. Thereafter at about 6.30 p.m., the police party heard noise from the side of line No. 15 and 16. On this they proceeded to that side and saw that some six persons beating Head constable Mahendra Singh. They flashed torches at the miscreants who thereafter fled to ward Naibasti. The four of the six miscreants were recognized by the police men on patrol duty. The four are the appellants, namely, Sajid, ilias, Nayeem and Isharat. The police party took their injured colleague Head constable Mahendra Singh to Civil Hospital, Haldwani and lodged first information report (Ext. A3) at 19.40 hours. On medical examination of Head constable Mahendra Singh, PW 4 Dr. J.S. Pangti recorded on 19.12.1985 at 7.10 p.m. following injuries on person of the injured:

1. Lacerated wound 3 cm X 1/4 cm X muscle deep over left eye brow outside. Bleeding from wound present.
2. Lacerated wound 3 cm X 1/4 cm X muscle deep over left forehead 3 cm above the left eye brow. Bleeding from wound was present.
3. Lacerated wound 2 cm X 1 cm with traumatic swelling in an area of 5 cm X 3 cm on the left side of face in zeugmatic area. Bleeding from wound was present.
4. Lacerated wound 3 cm X 1/2 cm X scalp deep on the left side of forehead 6 cm over left eye brow. Bleeding present.
5. Lacerated wound 1 cm X 1/2 cm inner side of ear.
6. Lacerated wound 1 X 1/2 cm on back of left ear. Muscle deep. Bleeding from wound was present.

7. Lacerated wound 2 X 1/4 cm X muscle deep on back of scalp, right side 3 cm above right ear.

The nature of injuries found simple. The crime was investigated by PW 5 Sub Inspector Om Raj Singh, who after interrogation of witnesses, and preparing site plan (Ext.A5), submitted charge sheet (Ext.A8) against all the four accused.

4. It appears, on receiving charge sheet the Magistrate, After giving necessary copies to the accused, the case was committed to the court of Sessions. The trail Court after hearing the prosecution and the defence, framed charge of offence punishable under section 307 read with section 34 IPC, against all the four accused who pleaded not guilty and claimed to be tried. On this prosecution got examined PW 1 H.C. Ram Datt Joshi (informant), PW 2 H.C. Mahendra Singh (injured), PW 3 H.C. Chandan Singh (eye witness), PW 4 Dr. J.S. Pangti, the medical officer who examined injuries on the person of injured, and PW 5 C.I. Om Raj Singh, the Investing Officer. The trial court put the documents and oral evidence under section 313 Cr. P.C. to the accused/appellant, in reply to which it is stated by them that only police men are examined as witnesses and their evidence is false. However, no evidence in defence was given. After hearing the parties, learned Additional Sessions Judge, who tried the case, found all the four accused namely, Sajid, Ilias, Nayeem and Isharat, guilty of offence punishable under section 307 read with section 34 IPC and sentenced each one of them to rigorous imprisonment for a period of seven years and also to pay fine of Rs. 5000/-, in default of payment of which, the defaulter had to undergo six months imprisonment.

5. There are three eye witnesses of the incident, namely, PW 1 H.C. Ram Datt, PW 2 H.C. Mahendra Singh and PW 3 H.C. Chandan Singh who are examined before the trail court.

One of them PW 2 Mahendra Singh is an injured person. The testimony of all the three eye witnesses gets corroboration from the injuries recorded by PW 4 Dr. J.S. Pangti in Ext. A2. according to Dr. J.S. Pangti (PW 4), the injuries found on the person of the injured could have been caused with iron rods. Eye witnesses have stated that assailants were armed with rods.

6. Sri. R.S. Sammal, learned counsel for the appellants has argued that no motive is disclosed by the prosecution for commission of crime. Had there been no direct evidence of eye witnesses, the motive would have been a relevant factor. But since in the present case, there is eye witness account given by the prosecution as such, non-disclosure of motive, in my opinion, does not create any reasonable doubt in the prosecution story.

7. On behalf of the appellants it is also argued that the first information report (Ext.A2) is not in the prescribed format and the document appears to have been concocted one. In reply to this, learned Assistant Government Advocate argues that since the printed forms were exhausted as such, the hand written prescribed from which is signed by Circle Officer (Officer of rank of Deputy Superintendent of Police) does not create any doubt as to the genuineness of the check report. I think explanation advanced on behalf of prosecution can not be rejected unless there is some thing more to further support the doubt expressed by the learned counsel for appellants.

8. It is contended by the learned counsel for appellants that the incident has taken place in a thickly populated area and in such circumstances, non-examination of any public witness, on the part of prosecution, should be treated to be a sufficient reason to doubt the prosecution story. It is a

Matter of common knowledge that generally public witnesses avoid to depose in the court. In the opinion of this Court, had there been no injury on the person of PW 2 H.C. Mahendra Singh or if the injuries had been superficial, the above contention advanced on behalf of the appellants could have weighed more. But nature of injuries suffered by the injured and presence of the members of the police patrol party who were to be joined by the injured creates little doubt in the prosecution story even if the public witnesses not examined.

9. Lastly, it is submitted that there was no source of light at the time of incident, in which eye witnesses could have seen the incident. I see little force in the submission for the reason that eye witnesses have stated that they flashed torches at the assailants and could recognize them. It is most natural that police party patrolling at night had torches with it at the time of such duty.

10. However, this Court is of the view that considering nature of injuries, on the person of the injured H.C. Mahendra Singh, a sentence of rigorous imprisonment of five years and fine of Rs. 2,500/- to each of the convicts would have met the ends of justice. Learned counsel for appellants argued that though all the seven lacerated wounds are on head and face of the injured but their nature is simple, and even if proved, the offence committed is covered under section 324 read with section 34 IPC and not under section 307 IPC. This Court is unable to accept the contention for the reason that causing one after another injures on head and face of the injured clearly indicates that the accused/appellants had intention to kill the injured and the conviction under section 307 IPC recorded by the trail court against the appellants suffers from no illegality.

11. For the reasons as discussed above, the appeal of appellants Iliash and Sajid is liable to be dismissed on the point of conviction. The same is dismissed. However, the sentence awarded to each one of them is reduced to rigorous imprisonment of five years and to a fine of Rs. 2,500/-, in default of payment of which, the defaulter would undergo six months further imprisonment. To that extent appeal stands partly allowed. The appeal of appellant Nayeem and Isharat stands abated due to their death during the period of appeal. The bail application No. 1478 of 2006 and warrant recall application No. 1490 of 2006 stand disposed of as infructuous.

(Prafulla C. Pant)

09.10.2006.
Negi.